Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1146

EDUARDO POETA,

Petitioner,

—v.—

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Petitioner, Eduardo Poeta, prays that a writ of certiorari be issued to review a judgment of the United States Court of Appeals for the Second Circuit, affirming a judgment of the United States District Court for the Eastern District of New York, dated March 19, 1971, convicting him of fourteen counts of illegally importing and distributing heroin in violation of 21 U.S.C. §§173 and 174, and one count of conspiracy to do so.

Opinion Below

The opinion of the United States Court of Appeals for the Second Circuit, not yet officially reported, is reprinted herein as an Appendix.

Jurisdiction

The judgment of the United States Court of Appeals for the Second Circuit was entered on January 24, 1972. By order dated February 26, 1972, this Court extended the time within which this petition had to be filed until March 8, 1972. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

Questions Presented

1. Whether Petitioner's right to counsel was violated by the wiretap interception of incriminating conversations after indictment but before arraignment.

2. Whether Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C. §§2510 et seq.) permits a wiretap authorized by it to be continued after the indictment of the persons whose conversations are sought to be overheard.

3. Whether the renewal of a wiretap order, pursuant to 18 U.S.C. §2518(5), may validly be based solely upon the same factual showing upon which the order to be renewed had been based.

4. Whether, when the authorities conducting a wiretap violate 18 U.S.C. §2518(5) by failing to minimize the quantity of material intercepted, one whose conversations were thus overheard but who was not the party upon whose telephone the wiretap was placed has standing to raise this issue.

Statement of the Case

Petitioner and one Luis Stepenberg were convicted, after jury trial in the United States District Court for the Eastern District of New York, of fourteen counts of illegal importation and distribution of heroin (21 U.S.C. §§173 and 174) and one count of conspiracy to do so. Stepenberg died before sentence; Petitioner was sentenced to forty years in prison.

Insofar as it may be pertinent here, the evidence introduced by the Government may be briefly summarized as follows:

In December of 1968, one Jaime Cohen (the chief Government witness) agreed to help Stepenberg and one Jacobo Grodntzsky import and distribute heroin in the United States. A house rented by Cohen in New York served as a distribution point for the heroin. On seven occasions between June, 1969 and February, 1970, varying quantities of heroin were delivered to that house. Petitioner would inform Cohen of their arrival and the latter would immediately retrieve the contraband, sell it, and give Petitioner the proceeds.

In February of 1970, Cohen was arrested and shortly thereafter began to cooperate with state and federal law enforcement officials. With his consent, a wiretap was placed upon his own phone. Later, by authority of an order issued by a New York State Supreme Court Justice, a wiretap was placed upon the telephone of Stepenberg. This petition revolves around the Stepenberg wiretap, which eventually produced three highly incriminating conversations between Petitioner and Stepenberg, all of which were introduced at trial, along with other evidence.